

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

DONNIE L. MARCO,

Defendant.

CASE NO. 8:09CR263

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 58). The government adopted the PSR (Filing No. 57). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to ¶¶ 35 (career offender) and 46 (prior conviction). The objections will be heard at sentencing. The government has the burden of proof with regard to ¶ 35 by a preponderance of the evidence. The objections do not state the basis for the objection to ¶ 46, and therefore the Court cannot yet determine which party has the burden of proof by a preponderance of the evidence.

IT IS ORDERED:

1. The Defendant's objections to ¶¶ 35 and 46 will be heard at sentencing;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary

hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 26th day of January, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge